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Supreme Court of the United States

OCTOBER TERM 1939

No. 124

HARRIET K. MOON,
Petitioner,

vs.

MUTUAL BENEFIT HEALTH & ACCIDENT ASSOCIATION, a corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF OF PETITIONER

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HARRIET K. MOON,
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vs.

MUTUAL BENEFIT HEALTH & ACCIDENT ASSOCIATION, a corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Harriet K. Moon, respectfully asks this Court to review, on writ of certiorari, that certain judgment of the United States Circuit Court of Appeals for the Fourth Circuit in the case of Mutual Benefit Health & Accident Association, a corporation, Appellant, vs. Harriet K. Moon, Appellee, entered on March 12, 1940, (Tr. p. 27) a petition for rehearing therein having been filed (Tr. p. 28) and a rehearing denied by said Court by order entered on the 11th day of April, 1940 (Tr. p. 34) all of which will more fully and at large appear by reference to a true copy of the record in said case, properly certified, herewith filed as a part hereof.

I.

SUMMARY STATEMENT OF THE MATTERS INVOLVED

Harriet K. Moon, the petitioner, instituted her action against the above named Mutual Benefit Health & Accident Association, a corporation, in the Circuit Court of Cabell County, West Virginia, a State court (Tr. p. 17) upon a certain insurance policy contract for accidental death benefits because of the accidental death of Charles C. Moon, the insured, and whose death occurred on July 11, 1938 (Tr. p. 1), the said insurance policy having been applied for within, countersigned and delivered to the insured while he was a resident of the State of West Virginia and in which state he resided at the time of his death. (Tr. p. 7.) (See also Transcript of Record in case of Moon vs. Home Life Insurance Co., also pending in this Court upon application for a writ of certiorari, and hereinafter referred to, pages 36 to 40.).

This suit was removed by the said Mutual Benefit Health & Accident Association from the State court to the District Court of the United States for the Southern District of West Virginia, upon the ground of diversity as to citizenship, the plaintiff being a resident of the State of West Virginia (Tr. p. 17), where it was tried to a jury. (Tr. p. 11.)

For the reason that the facts in this case were identical with the facts in the case of Harriet K. Moon vs. Home Life Insurance Co. of New York, a corporation, also instituted upon insurance policy contracts in the State Court aforesaid and likewise removed to the same District Court, the sole question of liability upon said policies being whether or not the insured, Charles C. Moon, came to his death solely from bodily injury caused by accident, or whether the said Charles C. Moon came to his death as the result

of self-destruction, (Tr. p. 4) (the other defenses in said answer being later withdrawn by stipulation) the District Court, by consent of the parties, directed the said causes to be tried together (Moon vs. Home Life Tr. p. 41) and by reason thereof the transcript of the evidence filed in the case of Harriet K. Moon vs. Home Life Insurance Co., a corporation, is also the record in this cause (Tr. pp. 15-36) and such parts of the record in that case are also made a part of this petition. At the conclusion of plaintiff's testimony, defendant moved for a directed verdict, which motion the Court overruled (Moon v. Home Life, Tr. p. 163), and thereafter at the conclusion of all the testimony the defendant again moved the Court for an instructed verdict upon the same grounds assigned in motion at conclusion of plaintiff's testimony, which motion was again overruled by the Court. (Moon vs. Home Life, Tr. p. 230.)

The jury found a verdict in favor of this petitioner for Five Thousand Dollars ($5,000.00) the face of the policy, and the defendant moved to set aside said verdict and grant it a new trial, (Tr. p. 12.) which motion the Court overruled and judgment was thereupon entered by said District Court on July 6, 1939 in favor of this petitioner against said Mutual Benefit Health & Accident Association, a corporation, defendant for said sum of Five Thousand Dollars ($5,000.00) and costs. (Tr. p. 13.)

From this judgment the said Mutual Benefit Health & Accident Association appealed to the United States Circuit Court of Appeals, Fourth Circuit, (Tr. p. 14) which court, after a hearing (Tr. p. 18), in an opinion by Circuit Judge Dobie, (Tr. p. 19) entered its judgment on March 12, 1940, reversing said judgment in favor of petitioner, with costs, and remanding said cause to the said District Court with directions to set aside said verdict and to enter judgment in favor of the said Mutual Benefit Health & Accident Association (Tr. p. 27).

Thereafter, and within the time provided by law, this petitioner filed her petition in said Circuit Court of Appeals for a rehearing of said cause, (Tr. p. 28) and by order entered by said Court on April 11, 1940, a rehearing was denied. (Tr. p. 34).

For the reason that the other facts involved in this cause and this application are fully stated in the petition of Harriet K. Moon vs. Home Life Insurance Co. for a writ of certiorari, filed contemporaneously herewith, reference is made thereto and the same is made a part hereof for a statement of the facts involved in this cause.

II.

STATEMENT DISCLOSING BASIS UPON WHICH THIS COURT HAS JURISDICTION

The jurisdiction of this Court is invoked under the provisions of Section 240 (a), Judicial Code, as amended, (U.S.C.A., Title 28, Sec. 347 (a).

III.

QUESTIONS INVOLVED

The following questions are involved:

1. The insurance contract in question, being a West Virginia contract, did not the Circuit Court of Appeals err in failing to apply the general law of West Virginia as announced by the Court of last resort of that state with reference to

(a) the presumption against suicide,

(b) that suicide was an affirmative defense casting the burden of proof upon the defendant,

(c) that in a case where all the facts are circumstantial that the evidence must clearly establish suicide to the exclusion of every reasonable hypothesis consistent with death by accident,

(d) the right of trial by jury,

(e) that the inferences to be drawn from the evidence are not a question of law, but of fact to be settled by the jury,

(f) that the verdict of the jury is looked to to settle the issues made and the inferences to be drawn from the evidence. (Tr. p. 28.)

2. Did not the Circuit Court of Appeals err in drawing its own inferences from the evidence contrary to the verdict of the jury? (Tr. p. 29.)

3. Did not the Circuit Court of Appeals err in substituting its own view, inferences, conclusions and beliefs (Tr. p. 19) from the evidence for the verdict of the jury so returned? (Tr. p. 33.)

4. Did not the Circuit Court of Appeals, by its judgment, deny to the petitioner a trial by jury guaranteed to her by the 7th amendment to the United States Constitution?

IV.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

Petitioner earnestly contends and respectfully submits that the writ of certiorari should be granted to review the judgment entered by said Circuit Court of Appeals for the following reasons:

1. Said Court has decided an important question of local law in conflict with the applicable local decisions, which decision will, in the future, permit the use of one rule of law in like insurance cases if the cause be tried in the Federal Court, and a different rule if the action be tried in the State Court.

2. Said Court has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise by this Court of its power of supervision in the following particulars, viz:

(a) In effect, denied trial by jury.

(b) Substituted its own beliefs and opinions for the verdict of the jury.

(c) Drew inferences from the evidence in conflict with the verdict of the jury.

(d) In effect, denied the application of the rule as to local law announced by this Honorable Court in Erie R. Co., vs. Tompkins (304 US 64) and, in effect, re-established in said Circuit the rule with reference to local law found in Swift vs. Tyson (16 Pet. 1, 18), Black & White Taxicab & Transfer Co. vs. Brown & Yellow Taxicab & Transfer Co., (276 US 518) and New York Life Ins. Co. vs. Gamer. (303 US 161.)

3. The public interest will be promoted by a prompt settlement in this Court of the questions involved herein.

WHEREFORE, YOUR PETITIONER RESPECTFULLY PRAYS that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fourth Circuit, commanding that Court to certify and send to this Court, for its review and determination, on a day certain

to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, namely: Number 4572 — Mutual Benefit Health & Accident Association, a corporation, Appellant, vs. Harriet K. Moon, Appellee, and that the said judgment of the Circuit Court of Appeals for the Fourth Circuit rendered in said case may be reversed by this Honorable Court, and the judgment of the District Court for the Southern District of West Virginia reinstated and affirmed, and that your petitioner may have such other and further relief or remedy in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

HARRIET K. MOON,

By Thomas West Peyton IV,
Attorney for Petitioner.

Ernest E. Winters, Jr.
Of Counsel for Petitioner.